



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **200732023**

Release Date: 8/10/2007

Date: May 17, 2007

Uniform Issue List : 507.04-00

Contact Person:

Contact's Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

M =

Dear :

This is in reply to your letter of December 29, 2004, requesting a ruling that you can seek to voluntarily terminate your private foundation status pursuant to section 507(b)(1)(B) of the Internal Revenue Code and section 1.507-2(b) of the Income Tax Regulations by operating as a publicly supported organization under section 170(b)(1)(A)(vi) of the Code for a 60-month period under section 507(b)(1)(B) beginning on January 1, 2005, and ending on December 31, 2009.

Facts

You, M, have decided to begin conducting fundraising events to support several public charities that are exempt under 501(c)(3) of the Code. Based on this addition to your operations and the related projected increase in your public support under 170(b)(1)(A)(vi) of the Code from the fundraisers, you have explained that, based on your submitted projected public support, you will reasonably be expected to terminate your private foundation status under section 509(a) of the Code pursuant to section 507(b)(1)(B), by means of meeting 509(a)(1) and 170(b)(1)(A)(vi) of the Code during your 60-month period beginning on January 1, 2005, and ending on December 31, 2009.

Law

Section 507(b)(1)(B)(i) of the Code indicates, in pertinent part, that the status as a private foundation under section 509(a) of any organization, with respect to which there have not been either willful repeated acts (or failures to act) or a willful and flagrant act (or failure to act) giving rise to liability for tax under Chapter 42 of the Code, shall be terminated if--

- (i) such organization meets the requirements of section 509(a)(1), 509(a)(2), or 509(a)(3) of the Code for a continuous period of 60 calendar months beginning with the first day of any taxable year which begins after December 31, 1969,
- (ii) such organization notifies the Secretary (in such manner as the Secretary may by regulations prescribe) before the commencement of such 60-month period that it is terminating its private foundation status, and
- (iii) such organization establishes to the satisfaction of the Secretary (in such

manner as the Secretary may by regulations prescribe) immediately after the expiration of such 60-month period that such organization has complied with section 509(a)(1), 509(a)(2), or 509(a)(3) of the Code.

Section 1.507-2(b)(3) of the Income Tax Regulations indicates, in pertinent part, that the private foundation shall, before the commencement of its 60-month period under section 507(b)(1)(B)(i) of the Code, provide notice of its intention to terminate its private foundation status pursuant to section 507(b)(1)(B)(i) of the Code. Such notification shall contain the following information:

- (i) the name and address of the private foundation;
- (ii) its intention to terminate its private foundation status;
- (iii) whether the 12-month or the 60-month period shall apply;
- (iv) the Code section under which it seeks classification:
section 509(a)(1), 509(a)(2), or 509(a)(3);
- (v) if section 509(a)(1) is applicable, the clause of section 170(b)(1)(A) involved;
- (vi) the date its regular taxable year begins; and
- (vii) the date of commencement of the 60-month period.

Section 1.507-2(b)(4) of the regulations indicates that, in order to comply with the requirements under section 507(b)(1)(B)(iii) of the Code, an organization shall, within 90 days after the expiration of the 60-month period, file such information as is necessary to make a determination as to the organization's status as an organization described under section 509(a)(1), 509(a)(2), or 509(a)(3) and the regulations thereunder.

Section 1.507-2(b)(5) of the regulations indicates that, where the private foundation has given timely sufficient notice of its intent to terminate under section 507(b)(1)(B) of the Code before the start of its 60-month period, if the information submitted within the required time is incomplete and the organization supplies the necessary additional information at the request of the Commissioner within the additional time period allowed by the Commissioner, the original submission will be considered timely.

Analysis

You, M, have decided to begin conducting fundraising events for several public charities that are exempt under 501(c)(3) of the Code. Based on this addition to your operations and the related submitted projected increase in your public support under 170(b)(1)(A)(vi) of the Code from the fundraisers, we concur that you will reasonably be expected to terminate your private foundation status under 509(a) of the Code pursuant to section 507(b)(1)(B) of the Code, by means of meeting sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code, during your 60-month period beginning on January 1, 2005, and ending on December 31, 2009.

Conclusion

Accordingly, we rule you will be treated as a publicly supported organization under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code during the 60-month period under section 507(b)(1)(B) of the Code that begins on January 1, 2005, and ends on December 31, 2009.

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of Code sections 2055, 2106, and 2522.

Within 90 days after the end of the 60-month period, you must submit to the Ohio Tax Exempt and Government Entities (TE/GE) Customer Service office the information needed to determine whether you have met the requirements of the applicable test during the 60-month period. The mailing address is: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. If you establish that you have been an organization under sections 509(a)(1) and 170(b)(1)(A)(vi), 509(a)(2), or 509(a)(3) of the Code, you will be classified as such an organization for as long as you continue to meet the requirements of the applicable section. If, however, you do not meet the section 509(a)(1), 509(a)(2), or 509(a)(3) requirements for the 60-month period, you will be classified again as a private foundation for the tax year(s) of the 60-month period for which you do not qualify as a publicly supported organization under section 509(a)(1) or 509(a)(2) or as a supporting organization under section 509(a)(3).

Donors (including private foundations) may rely on this ruling that you are treated as not a private foundation until 90 days after the 60-month ruling period ends. If you submit the required information within the 90 days, donors may continue to rely on this ruling until we make a final determination of your foundation status. However, if notice that you will no longer be treated as the type of organization indicated above is published in the Internal Revenue Bulletin, donors may not rely on this ruling after the date of such publication. Also, donors (other than private foundations) may not rely on the classification indicated above if they were in part responsible for, or were aware of, the act that resulted in your loss of that classification, or if they acquired knowledge that the Internal Revenue Service had given notice that you would be removed from that classification. Private foundations may rely on the classification as long as you were not directly or indirectly controlled by them or by disqualified persons with respect to them. However, private foundations may not rely on the classification indicated above if they acquired knowledge that the Internal Revenue Service had given notice that you would be removed from that classification.

You are required to continue to file Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation*, until you complete your 60-month termination and qualify as a Code section 509(a)(1), 509(a)(2), or 509(a)(3) organization. Your Form 990-PF must be filed by the 15th day of the fifth month after the end of your annual accounting period. Page 1 of Form 990-PF has a block to indicate that you are in the process of terminating your private foundation status under section 507(b)(1)(B) of the Code. You should attach a copy of this ruling letter to each Form 990-PF that you file during your 60-month termination period. A penalty of \$20 a day is charged when a return is filed late, unless there is reasonable cause for the delay. The maximum penalty charged cannot exceed \$10,000 or 5 percent of your gross receipts for the year, whichever is less. For organizations with gross receipts exceeding \$1,000,000 in any year, the penalty is \$100 per day per return, unless there is reasonable cause for the delay. The maximum penalty for an organization with gross receipts exceeding \$1,000,000 shall not exceed \$50,000. This penalty may also be charged if a return is not complete, so please be sure your return is complete before you file it. Form 990-PF should be filed with the Ogden Service Center, Ogden, UT 84201-0027.

If you do not pay the tax imposed by section 4940 of the Code for any tax year(s) during the 60-month period, and it is subsequently determined that such tax is due for such tax year(s), you will be liable for interest in accordance with section 6601 of the Code. Because any failure to pay such taxes during the 60-month period is due to reasonable cause, the penalty under section 6651 of the Code with respect to the tax imposed by section 4940 of the Code shall not apply. Refer to section 1.507-2(e)(4) of the Income Tax Regulations. If you satisfy the requirements of section 507(b)(1)(B) of the Code at the end of your 60-month period, you will not be subject to the provisions of sections 507(a), 507(c), or 507(g) of the Code.

If, within 90 days after the end of your 60-month period, you provide the Ohio Tax Exempt and Government Entities (TE/GE) Customer Service office with the information that shows that your termination of private foundation status was effective, you can then file Form 990, *Return of Organization Exempt from Income Tax*, for the final tax year of the termination period, even if that office has not yet affirmed that you have appropriately terminated your private foundation status by the time that your annual return for the final year of termination is due. Such Form 990 is required only if your gross receipts each year are normally more than \$25,000. If your gross receipts each year are normally not more than \$25,000, we ask that you establish that you are not required to file Form 990 by completing Part I of that Form. Thereafter, you will not be required to file a return until your gross receipts exceed the \$25,000 minimum. For guidance in determining if your gross receipts are "normally" not more than the \$25,000 limit, see the instructions for the Form 990. If Form 990 is required, it must be filed by the 15th day of the fifth month after the end of your annual accounting period. A penalty of \$20 a day is charged when a return is filed late, unless there is reasonable cause for the delay. The maximum penalty charged cannot exceed \$10,000 or 5 percent of your gross receipts for the year, whichever is less. For organizations with gross receipts exceeding \$1,000,000 in any year, the penalty is \$100 per day per return, unless there is reasonable cause for the delay. The maximum penalty for an organization with gross receipts exceeding \$1,000,000 shall not exceed \$50,000. This penalty may also be charged if a return is not complete, so please be sure your return is complete before you file it.

If you have any immediate questions about this ruling letter, please contact the person whose name and telephone number are shown in the heading. Because this letter could help resolve any questions about your exempt status, you should keep it in your permanent records. If you have any questions about filing requirements, excise, employment, or other federal taxes, please contact the TE/GE Customer Service office at 1-877-829-5500 (a toll free number) or correspond with that office via its P.O. Box 2508, Cincinnati, OH 45201.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions, which we intend to make available for public inspection, is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

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This ruling letter is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,
Debra J. Kaweck
Manager, Exempt Organizations
Technical Group 2

Enclosures: Notice 437
Form 872